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AICPA *Washington Report*

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DEFENSE, DEPARTMENT OF

A requirement that defense contractors establish fraud, abuse and waste awareness programs for their employees as a condition for doing business with the Department of Defense (DOD) was recently proposed (see the 11/21/86 Fed. Reg., pp. 42113-14). This amendment to DOD's Federal Acquisition Regulation Supplement, if adopted, would require that DOD contracts contain a clause requiring contractors to implement a fraud, waste and abuse program tailored for the particular firm engaged in the government contracting. The contractor must include in his program employee orientation that describes employee responsibilities for preventing and reporting fraud, waste and abuse. Included in the orientation must be information concerning fines and penalties for false claims and statements, collusive bids, bribery, unlawful gratuities, mail and wire fraud. Employees must also be informed that they may not be discriminated against for disclosing to Members of Congress, DOD or Justice Department officials and violations of law relating to defense contracts. Under additional elements of the program, the contractor must a) prominently display posters providing information concerning government Inspector General "Hotline" procedures; b) inform employees of their responsibilities for assuring accurate time charges and the integrity of the contractor's timekeeping system; and, c) undertake periodic discussions with employees of their responsibilities and liabilities for the prevention of fraud, waste and abuse. Exempted from the requirement would be DOD prime contracts awarded using small purchase procedures of FAR Part 13 and subcontracts not exceeding \$25,000. Comments are requested by 1/20/87. For additional information contact Charles Lloyd at 202/697-7266.

SECURITIES AND EXCHANGE COMMISSION

The SEC considered and unanimously approved actions related to disclosure guidelines, loan loss accounting, and shareholder communications rules for banks during an open meeting held 11/25/86. The Commission authorized publication of a final rule amending Industry Guide #3, "Statistical Disclosure by Bank Holding Companies," that would change the form of disclosure for outstanding loans, accrued interest, acceptances, interest-bearing deposits or investments to borrowers in foreign countries experiencing liquidity problems. The amendments require uniform disclosure in tabular form of the balances of these outstandings, and information describing pre- and post-restructuring payment terms, as well as an analysis of changes in aggregate outstandings to the countries and amounts of interest both collected and recorded as income on the outstandings to the countries. The rule was first proposed in the 8/8/86 Fed. Reg., pp. 28596-99 (see the 8/11/86 Wash. Rpt.). The Commission also agreed to issue an interpretive release addressing accounting for loan losses by SEC registrants engaged in lending activities. The release provides guidance on the way in which loan losses should be analyzed and reported, requirements on accounting for repossessed collateral, and valuation of loan collateral that is substantively or formally repossessed. A third action by the Commission resulted in the adoption and publication of a final rule changing the ways in which issuers of securities communicate with the beneficial owners of securities registered in the name of commercial banks and under what conditions registrants are no longer obligated to deliver annual reports or proxy statements to security holders. The proposed rule was published in the 6/5/86 Fed. Reg., pp. 20504-16 (see the 6/9/86 Wash. Rpt.). For further information about the amendments to Industry Guide #3 or accounting for loan losses contact Wayne Pentract at 202/272-2157; for information about shareholder communications rules contact Elisse Walter at 202/272-2579.

TREASURY, DEPARTMENT OF

Certain required distributions from Individual Retirement Accounts (IRAs) and qualified plans for 1985 and 1986 will not have to be made until 12/31/87, according to IRS Notice 86-14. The notice is scheduled to be published in Internal Revenue Bulletin No. 1986-48, dated 12/1/86. The notice provides guidance with respect to minimum required before-death and after-death distributions from qualified plans and IRAs pursuant to sections 401(a)(9), 408(a)(6) and 408(b)(3) of the Internal Revenue Code, as amended by section 521 of the Tax Reform Act of 1984. Notice 86-14 states, that "Because regulations will not be published in sufficient time to provide guidance necessary to enable plan administrators and individuals to make required minimum distributions for 1985 and 1986 from qualified plans and IRAs by 12/31/86, this notice further delays the date by which minimum distributions for 1985 and 1986 must be made." Regulations on minimum distributions will be published by 3/1/87 and will provide specific guidance for calculating the amount of the minimum distributions required to be made by 12/31/87 for calendar years 1985, 1986, and 1987, according to the IRS notice. Distributions from qualified plans or IRAs made in 1985 or 1986 (except to the extent rolled over to another plan or IRA) with respect to taxpayers for whom minimum distributions are required for such years will be credited towards the minimum distributions required to be made by 12/31/87, the IRS stated. A copy of the IRS notice may be obtained by calling 202/566-4054.

Guidance on how to avoid the "built-in" capital gains tax imposed by the Tax Reform Act of 1986 on certain corporations that elect subchapter S status after 12/31/86 was recently issued by the IRS (Revenue Ruling 86-141). The new tax law repealed the General Utilities doctrine by imposing a corporate level tax when corporations liquidate or distribute appreciated property. According to the ruling, the "built-in" capital gains tax can only be avoided entirely if a corporation files for subchapter S status prior to 1/1/87. The election must become effective no later than the beginning of the first tax year after the tax year in which the election is made. For the election to be valid, it must be made when the corporation meets all the statutory requirements for S corporation status. The IRS noted that certain qualified corporations may obtain partial relief from the built-in gains tax even if their S elections are made on or after 1/1/87 by satisfying several additional requirements contained in section 633(d) of the Act. Rev. Rul. 86-141 will be published in the Internal Revenue Bulletin 1986-49, dated 12/8/86. For further information contact the IRS Public Affairs Division at 202/566-4024.

Final rules clarifying the appropriate time for determining whether a person and a controlled entity are "related persons" have been published by the IRS (see the 11/26/86 Fed. Reg., pp. 42835-36). The rule states that when a person sells property to or exchanges property with an 80-percent owned entity, the proper time for determining relatedness is immediately after the sale or exchange. When an 80-percent owned entity sells property to or exchanges property with a person, the rule provides that the time for determining relatedness is immediately before or after the sale or exchange of the depreciable property. For determination of transfers between two 80-percent owned entities, the rule states that the two entities are related if the same shareholder both owns 80-percent or more in value of the stock of the transferor before the sale or exchange of depreciable property and owns 80-percent or more in value of the stock of the transferee immediately after the sale or exchange of depreciable property. The regulations are effective for transfers after 1/6/83. Section 1239 of the Internal Revenue Code of 1954 disallows capital gains treatment on the sale or exchange of depreciable property between related taxpayers. For further information contact Robert Beatson at 202/566-3459.

SPECIAL: AMERICAN TORT REFORM ASSOCIATION TO OFFER INDIVIDUAL MEMBERSHIPS

Individual memberships in the American Tort Reform Association (ATRA) will be offered in 1987 in order to "allow concerned citizens to take an active role in promoting tort reform at the grass roots level," according to an ATRA news release. Presently, ATRA is comprised of nearly 400 organizations, including the AICPA, representing some 30 million Americans. Individual members will receive ATRA's newsletter and periodic updates on the liability crisis and legislative initiatives in their individual states. Individual members will also be asked to notify state legislators of their support for specific legislative proposals. For further information contact Sylvia Rowe at 202/289-6414.

For further information contact Shirley Hodgson or Joseph Petito at 202/872-8190.

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